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91-460

CASE NO.

Supreme Court, U.S.
FILED
AUG 21 1991
OFFICE OF THE CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1991

THEODORE THOMAS,

Petitioner

versus

DEPARTMENT OF THE NAVY,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FEDERAL CIRCUIT

PETITION FOR WRIT OF CERTIORARI

Theodore Thomas
PRO SE
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Portsmouth, VA 23701
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QUESTION PRESENTED FOR REVIEW

I

Is the "WHISTLEBLOWER PROTECTION ACT of 1986" violated when the supervisor takes action, directs others to take action or, recommends a Federal Civil Servant be fired as a reprisal for winning a grievance relating to fraud, waste, and abuse.

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TABLE OF AUTHORITIES

"Whistleblower Protection Act of 1986" (99th Congress 2nd Session - H.R. 4033)

Title 5, Section § 2302(b)(8-9), United States Code, "Prohibited Personnel Practices".

REFERENCE TO OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS

	DATE
a. Petitioner filed administrative grievance with agency after receiving an unsatisfactory job performance rating after disclosing some waste, fraud, and abuse to his supervisor.	JAN 13, 1988
b. Administrative Grievance favored Petitioner.	OCT 24, 1988
c. Petitioner removed from job position related to Grievance, and assinged another job.	OCT 31, 1988
d. Petitioner received "Certificate of Commendation".	NOV 28, 1988
e. Supervisor that Petitioner had grievance with received "normal 2 year" military Change of Command orders.	DEC 15, 1988
f. Petitioner gets new military supervisor.	DEC 15, 1988
g. New supervisor begins Petitioner Removal Paperwork.	JAN 18, 1989
h. Petitioner received Letter of Proposed Removal/Firing	APR 5, 1989
i. Petitioner received letter of termination/firing effective JUN 30, 1989	JUN 29, 1989 (1130 mail)

j. Petitioner accepted agency Involuntary Retirement	JUN 29, 1989 1600 in Agency Personnel Office
k. Petitioner appealed Prohibited Personnel Action (The United States Code [5USCS § 2302(b)(8-9)] to the Merit System Protection Board (MSPB).	JUL 19, 1989
l. MSPB Administrative Judge denied Petitioner's appeal for lack of Jurisdiction	OCT 3, 1989
m. MSPB denied appeal 5 C.F.R. § 1201.115	FEB 26, 1990
n. Petitioner appealed to United States Court of Appeals for the Federal Circuit.	JUL 20, 1990
o. United States Court of Appeal for the Federal Circuit denies appeal.	MAY 24, 1991

JURISDICTIONAL STATEMENT

The judgment sought to be reviewed was dated and entered May 24, 1991.

The jurisdiction of this Honorable Court is invoked pursuant to the specific provisions of the:

1. "Whistleblower Protection Act of 1986", the stated purpose, "The purpose of this Act is to strengthen and improve protection for the rights of Federal employees, to prevent reprisals, and to help eliminate wrongdoing within the Government by mandating that victims of prohibited personnel practices, especially whistleblowers, should be restored to their previous positions. (99th Congress 2nd Session, HR 4033)

2. Prohibited Personnel Practices 5 USC § 2302(b)(8&9) the stated purpose of this title is to, prohibit any employee who has authority to take action, direct others to take action or, recommend, or approve any personnel action, shall not, with respect to such authority take or fail to take personnel action with respect to any

employee as a reprisal for a disclosure of information by an employee reasonably believed to be evidence of wrongdoing.

THE CONSTITUTIONAL PROVISIONS

Whistleblower Protection Act of 1986 (99th Congress, 2D Session, H.R. 4033).

Prohibited Personnel Practice, 5 U.S.C. 2302(b)(8-9).

STATEMENT OF THE CASE

After one month (12/15/88-01/18/89) in a new job and new command, a military officer starts removal action of an Electronics Engineer GM-13 from the Federal Civil Service. The Engineer had no prior disciplinary problems during his 32 years working for the Navy.

This is truly the type of reprisal that caused President Reagon and Vice President Bush to sign into law the Whistleblowers Protection Act of 1986.

Congress "mandated that victims of prohibited personnel practices, especially whistelblowers, should be restored to their previous positions.

The "prohibited personnel action" of the Navy is contrary to 5 USC 1202(b)(8-9).

REVIEW OF JUDGEMENT

The Whistleblowers Protection Act H.R. 4033 and 5 USC 1201(b)(8-9) clearly is contrary to the judgment of the opinions of The Federal Circuit and the Merit System Protection Board.

CONCISE ARGUMENT FOR GRANTING WRIT

The Whistleblowers Protection Act H.R. 4033 and 5 USC 1201(b)(8-9) clearly is contrary to the judgment of the opinions of The Federal Circuit and the Merit System Protection Board.

APPENDIX

APPENDIX

DECISION

Theodore Thomas appeals the decision of the Merit Systems Protection Board (MSPB or board), Docket No. PH07528910444 (February 26, 1990), dismissing Thomas' appeal to the board for lack of jurisdiction. We affirm.

OPINION

In his appeal to the MSPB, Thomas alleged that his resignation was "involuntary, coercive and time pressured," and motivated by race and age discrimination. (Petitioner contends that this opinion is contrary to the Whistleblowers Act and Prohibited Personnel Practice Code 5 USC 1202(b)(8-9).)

NOTE: Pursuant to Fed. Cir. R. 47.8, this disposition is not citable as precedent. It is a public record. The disposition will appear in tables published periodically.

United States Court of Appeals for the Federal Circuit

90-3263

THEODORE THOMAS,

Petitioner,

v.

DEPARTMENT OF NAVY,

Respondent.

DECIDED: May 24, 1991

Before ARCHER, PLAGER and CLEVENGER, Circuit Judges.

PER CURIAM.

DECISION

Theodore Thomas appeals the decision of the Merit Systems Protection Board (MSPB or board), Docket No. PH07528910444

(February 26, 1990), dismissing Thomas' appeal to the board for lack of jurisdiction. We affirm.

OPINION

In his appeal to the MSPB, Thomas alleged that his resignation was "involuntary, coercive and time pressured," and motivated by race and age discrimination.

After considering the evidence, including evidence relating to reprisal and discrimination, and assessing the credibility of the witnesses, the Administrative Judge (AJ) found that Thomas' resignation was voluntary and not a coerced or involuntary removal. We have considered Thomas' arguments in light of the record and are not convinced that the AJ's finding of voluntariness was arbitrary, capricious, an abuse of discretion, unsupported by substantial evidence, or otherwise not in accordance with law. See 5 U.S.C. § 7703(c) (1988); Hayes v. Department of the Navy, 727 F.2d 1535, 1537 (Fed. Cir. 1984). Because Thomas' resignation was voluntary, it was not an adverse agency action appealable to the MSPB. See Cruz v. Department of the Navy, No. 89-3359, slip op. at 9 (Fed. Cir.

Apr. 30, 1991) (in banc); Christie v. United States, 518 F.2d 584 (Ct. Cl. 1975).

Thomas, however, contends that the board had jurisdiction because his appeal included allegations of discrimination and reprisal and was therefore a "mixed case." See 5 U.S.C. § 7702(a)(1) (1988). We disagree. The AJ correctly held that neither reprisal, see Wren v. Merit Sys. Protection Bd., 681 F.2d 867, 871073 (D.C. Cir. 1982), nor discrimination, see Synan v. Merit Sys. Protection Bd., 765 F.2d 1099 (Fed. Cir. 1985), provides an independent basis for MSPB jurisdiction. Where, as here, there is no appealable adverse agency action, the board is without jurisdiction and, therefore, cannot consider the merits of Thomas' discrimination or reprisal assertions. See Cruz, slip op. at 20-21.

UNITED STATES OF AMERICA
MERIT SYSTEMS PROTECTION BOARD

THEODORE THOMAS, Appellant	)	DOCKET NUMBER PH07528910444
v.	)	
DEPARTMENT OF THE NAVY, Agency.	)	DATE: FEB 26 1990

David B. Schultz, Esquire, Virginia Beach, Virginia, for the appellant.

Margaret E. Worsham, Norfolk, Virginia, for the agency.

BEFORE

Daniel R. Levinson, Chairman
Maria L. Johnson, Vice Chairman

ORDER

After full consideration, we DENY the appellant's petition for review of the initial decision issued on October 3, 1989, because it does not meet the criteria for review set forth at 5 C.F.R. § 1201.115. This is the Board's final order in this appeal. The initial decision in this appeal is now final. 5 C.F.R. § 1201.113(b).

NOTICE TO APPELLANT

You have the right to request the United States Court of Appeals for the Federal Circuit to review the Board's final decision in your appeal if the court has jurisdiction. See 5 U.S.C. § 7703(a)(1). You must submit your request to the court at the following address:

United States Court of Appeals
for the Federal Circuit
717 Madison Place, N.W.
Washington, DC 20439

The court must receive your request for review no later than 30 calendar days after receipt of this order by your representative, if you have one, or receipt by you personally, whichever receipt occurs first. See 5 U.S.C. § 7703(b)(1).

FOR THE BOARD:

Robert Taylor
Clerk of the Board

Washington, D.C.

CERTIFICATION OF SERVICE

I certify that under penalty of perjury that on August 21, 1991, I caused to be served in person copies of "Petitioner's memorandum related to his informal brief".

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